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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 425 of 2002
Cuttack, this the 13th day of November, 2003

Baidhar Behera.	Applicant.
:Versus:		
Union of India & Ors.	Respondents.

FOR INSTRUCTIONS

1. WHETHER it be referred to the reporters or not?
2. WHETHER it be circulated to all the Benches of the Central Administrative Tribunal or not?

No

[Signature]
(SMT. BHARATI RAY)
Member (Judicial)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 425 of 2002
Cuttack, this the 13th day of Nov., 2003.

C O R A M:-

THE HONOURABLE SMT. BHARATI RAY, MEMBER (JUDICIAL).

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Baidhar Behera,
Aged about 62 years,
S/o. Late Musa Behera,
Village-Kendudhip,
PO: Jakhapura,
PS: Duburi,
Dist. Jajpur,
retired as Railway Sr. Trackman/Gangman,
At: Kendudhip, PO: Jakhapura,
PS: Duburi,
Dist. Jajpur. Applicant.

By legal practitioner: Mr. J.N. Mohanty, Advocate.

- Versus -

1. Union of India represented by its General Manager,
South Eastern Railway having head quarters Garden
Reach, Lelin Sarani Marg, Calcutta-43, At/PO: Calcutta,
West Bengal.
2. Divisional Railway Manager, South Eastern Railway,
At/PO: Khurda Road, Dist. Khurda.
3. Senior divisional Personnel Officer, South Eastern
Railway, At/PO: Khurda Road, Dist. Khurda.
4. Chief Permanent Way Inspector, South Eastern Rly.,
At/PO: Bhadrak, Dist. Bhadrak.

.... Respondents.

By legal practitioner: Mr. B. Pal, Senior Counsel for Railways

&
Mr. B.K. Baji, Additional Standing Counsel
for the Railways.

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O R D E R

SMT. BHARATI RAY, MEMBER (JUDICIAL) :-

Applicant has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985 praying for quashing of the order dated 25-04-2002 in Annexure-4 and for a direction to the Respondents to pay him his retirement benefits with interest at the rate of 18% per annum.

2. It is the case of the Applicant that he was engaged as Casual Gangman under the Respondents in the year 1985 and discharged his duties as such, on stop gap basis till 1990 and thereafter from 11.5.1990 to 06.01.1996, he was regularised in the post of a Gr.D and retired from service on attaining the age of superannuation w.e.f. 31.10.2000. The Applicant has not mentioned his date of regularisation in his Original Application. However, in the counter-reply filed by the Respondents it has been disclosed that the Applicant was initially engaged as Casual Gangman on daily rate basis @ Rs.8.50 per day for the period from 22-07-1986 to 17-11-1986, @ Rs.10/- per day from 06.07.1987 to 20.10.1987, thereafter from 29.06.1988 to 20.10.1988 and from 29.06.1989 to 23.10.1989 (Annexure-1 series to the Original Application). He was conferred with the

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temporary status on 11-05-1990 and was granted the authorised scales of pay. Subsequently, after due screening and on availability of regular post, the service of the applicant was regularised on 07.01.1996. Ultimately, the Applicant retired from service w.e.f. 30.10.2000.

3. No rejoinder has been filed by the Respondents rebutting the stand taken by the Respondents in their counter-reply.

4. None is present on behalf of the Applicant; no request has also been made for an adjournment. I have heard Mr. B. Pal, learned Senior Counsel appearing for the Respondents (assisted by Mr. B. K. Bal, learned Additional Standing Counsel appearing for the Respondents) and perused the materials placed on record. This being a year old matter of 2002, pertaining to the pensionary benefits of the Applicant, I feel inclined to proceed under Rule -15 of CAT (Procedure) Rules, 1987.

5. After the retirement, since no retirement dues was paid to the Applicant, the Applicant approached this Tribunal earlier in Original Application No. 76 of 2002 seeking direction to the Respondents for settlement of his dues; which was disposed of by this Tribunal on 22-2-2002 directing the Respondents to consider the case of the Applicant for grant of pensionary benefits

expeditiously and to decide the matter within a period of one month from the date of receipt of a copy of the order (Annexure-3). Pursuant to the said order of this Tribunal, the Respondents issued the impugned order dt. 25/4/2002 under Annexure-4. In the said letter/order, under Annexure-4, the Respondents have pointed out that as per Estt. Sl. No. 239/80, 50% of casual service i.e. after attainment of temporary status upto regularisation is to be taken as qualifying service for computation of pensionary benefits and the periods of casual engagements on daily rate of pay are not counted for the pensionary benefits. It was further mentioned that as per Rule 69(b) of the Railway Services (Pension) Rules, 1993, pension is granted on completion of 10 years qualifying service. Since the Applicant had not completed 10 years regular/qualifying service in the Railways, the Applicant is not entitled to get any pensionary benefits. Aggrieved by the said letter, the Applicant has approached this Tribunal in the present Original Application praying the reliefs stated above.

6. The main question that arises for consideration in this Original Application is as to whether the Applicant who attains the temporary status on 11-05-1990 and was regularised on 07.01.1996 is entitled to get pension/pensionary dues.

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7. As per the Estt.Sl.No.2005, Casual labour including Project Casual labour shall be eligible to count only half the period of service rendered by them after attaining temporary status on completion of prescribed days of continuous employment and before regular absorption, as qualifying service for the purpose of pensionary benefits. This benefit is admissible only after their absorption in regular employment. In the case of UNION OF INDIA AND OTHERS VRS. G.RADHAKRISHNA PANICKAR AND OTHERS etc.etc.-1998(3)AISLJ 271; and in the case of THE DIRECTOR GENERAL, COUNCIL OF SCIENTIFIC AND INDUSTRIAL RESEARCH VRS.DR. K.NARAYANSWAMI AND OTHERS (in Civil Appeal No.2576 of 1995 (arising out of SLP (C) No.6524 of 1994 decided on 21.2.1995), the Rules/Scheme framed by the Railways for counting 50% of the casual period with temporary status and 100% of service from regularisation till the date of retirement on superannuation was the subject matter of challenge and while deciding the matter the same had been upheld by the Hon'ble Supreme Court in the case of Union of India and others vrs. G.Radhakrishna Panickar and others (supra). Therefore, law has been settled on the issue that 50% of the service after acquiring temporary status and 100% of service after regularisation till retirement on superannuation shall be counted for the purpose of pension and pensionary benefits. From the particulars given by the Respondents, it is seen that the Applicant attained the temporary status on 11.5.1990 and was regularised on 7-1-1996. Therefore, he could not complete

10(ten) years of qualifying service on the date of superannuation to be eligible for pension/pensionary benefits. From the order passed by this Tribunal in O.A. Nos. 565/1995, 23/2001 and 488/2000 disposed of on 6.9.2002 (Annexure-R/4), I find that in that case the Applicants therein have already granted pension. But herein is a case, where the applicant has not been granted the pension since he had not completed the required period of ten years qualifying service. The applicant in the present case is not similarly situated like that of the Applicants in OA Nos. 565/1995 and others.

8. In the facts and circumstances of the case,; in view of the law laid down by the Hon'ble Supreme Court and in view of the rules, the Applicant is not entitled to get the pension/pensionary benefits. Therefore, this Original Application is dismissed being devoid of any merit. No costs.

9. Interim order passed on 31-05-2002 stands vacated.

Bharati R.
(SMT. BHARATI RAY)
MEMBER (JUDICIAL)

KNM/CM.